

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

THE STATE OF TEXAS,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

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CIVIL ACTION No. 2:23-cv-00055-AM

SUPPLEMENTAL APPENDIX TO PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY RESTRAINING ORDER

S-1	Declaration of Brian Cooney	Supp. Appx. 001 - 004
S-1.1	Exhibit A - Pictures described in ¶ 11 of Declaration of Brian Cooney	Supp. Appx. 005 - 009

Dated: October 27, 2023.

Respectfully submitted.

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Attorney General of Texas

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 27, 2023, and served on all Defendants via Certified Mail Return Receipt.

/s/ Ryan D. Walters
RYAN D. WALTERS

DECLARATION OF BRIAN COONEY

1. My name is Brian Cooney. I am a Staff Sergeant assigned to Task Force Eagle under Golf Company and I am an employee of the Texas Military Department (“TMD”). In that role, I currently serve as a Team Leader on Operation Lone Star (“OLS”), as Sergeant of the Guard.
2. I have served in OLS since July 2023. My job duties include patrolling and maintaining my area of operations along the border as part of OLS and taking care of soldiers under my command. I currently serve in the vicinity of Eagle Pass, Texas.
3. During my service at the Texas-Mexico border I have observed that Eagle Pass remains an area where large numbers of migrant border crossings regularly occur. During my service, I have observed TMD personnel construct, maintain, and repair Texas’s concertina wire fence within my area of operation in the Eagle Pass area.
4. When TMD soldiers encounter destruction of, damage to, or a breach in the concertina wire fence, it is our practice to send a “spot

report” to the OLS Battle Desk, which forwards those reports to the TMD engineering team.

5. On October 26, 2023, I was on my regular patrol at the international border near the river, in close proximity to the Heavenly Farms Pecan Orchard, when I spotted a group of several hundred migrants congregating on the Mexican side of the Rio Grande. Once this group reached a certain size, it began to cross the river.
6. At around 12:30 PM on October 26, 2023, as soon as the first group of migrants who had crossed the river set foot on the Texas side, I saw a telehandler forklift operated by an agent of U.S. Border Patrol (“BP”) move in to position to assist the migrants. .
7. The forklift driven by the BP agent inserted pallet forks into the concertina wire barrier, lifted the barrier high enough to pull out of the ground the fencing stakes that kept the fence in place, and held it suspended in the air for approximately 20 minutes. This created a gap in the wire fence large enough to allow migrants to cross.
8. BP agents then began to help the migrants enter through the gap in the wire fence created by the forklift. I observed 310 migrants cross through the gap.

9. None of the federal personnel at the scene asked for permission from me or, to my knowledge, from other OLS personnel to move the concertina wire barrier. And as far as I am aware, no such permission was granted by TMD to PB.
10. During this process, I saw PB airboats in the water. The airboats were not obstructed by the concertina wire barrier. BP airboats access the river from isolated access points along the Rio Grande. I did not witness any of the migrants in distress while they were in the river, and none of the migrants appeared to need medical attention. Additionally, while I observed this episode, no call was made by anyone at the scene for a medical team to assist the migrants. Instead, as the migrants who had just crossed the river approached the gap in the fence, BP agents began assisting the migrants entry through the concertina wire.
11. I witnessed 310 migrants enter through the gap in the fence created by the forklift operated by BP agents. This occurred over a twenty-minute period. I and other TMD personnel documented this event using cellphone cameras. Attached as Exhibit A are true and correct copies of photos that were taken at the scene that depict these events.
12. After the last of the migrants passed through the concertina wire that had been raised by the telehandler forklift, the BP agent operating it lowered

the wire. The stakes that were attached to the wire, and which keep the wire in place, were not put back into the ground. As a result, the wire will have to be repaired by TMD engineers.

13. After this incident, I spoke with the operator of the telehandler forklift who was dressed in plain clothes. When I inquired about his role on the scene, he confirmed that he worked for BP.

14. As I documented the event, BP officers approached me and claimed I was not authorized to take any pictures of them or ask their names.

15. After this incident, the BP employees positioned the forklift up the hill next to the paved road 100-150 yards away from point 2020, which is along the river. I drafted a spot report to the OLS Battle Desk describing what I had witnessed and explaining that it seemed likely that BP might use the machinery again to lift the concertina wire fence.

I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and information.

Signed this 26th day of October 2023.

COONEY.BRIAN.PA
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Date: 2023.10.26 22:24:45
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Brian Cooney
Staff Sergeant
Texas Military Department

Exhibit A







